

AMENDED IN ASSEMBLY MAY 3, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1767**

**Introduced by Assembly Member Zettel**

January 19, 2000

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An act to amend ~~Section 1417.6~~ *Sections 502.01 and 1417.6* of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 1767, as amended, Zettel. Crimes: exhibits.

*Existing law provides that any computer, computer system, computer network, or any software or data, owned by the defendant that is used during the commission of specified offenses shall be subject to forfeiture.*

*This bill would add to the list of offenses for which a computer, computer system, computer network, or any software or data used in the commission of the offense would be subject to forfeiture.*

Existing law provides for the disposition of exhibits in criminal cases. Existing law requires that specified property that was used by a defendant in the commission of the crime of which the defendant was convicted, or property with which the defendant was armed or that was in the defendant's possession at the time of the arrest, be destroyed or otherwise disposed of, as specified, after it is introduced or filed as an exhibit in a criminal case.

This bill would also make these provisions applicable to specified exhibits of property in a criminal case that were not used by the defendant or in the defendant's possession.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. *Section 502.01 of the Penal Code is*  
2 *amended to read:*

3 502.01. (a) As used in this section:

4 (1) "Property subject to forfeiture" means any  
5 property of the defendant that is illegal  
6 telecommunications equipment as defined in subdivision  
7 (g) of Section 502.8, or a computer, computer system, or  
8 computer network, and any software or data residing  
9 thereon, if the telecommunications device, computer,  
10 computer system, or computer network was used in  
11 committing a violation of, *or conspiracy to commit a*  
12 *violation of*, Section 422, 470, 470a, 472, 475, 476, 480, 483.5,  
13 484g, or subdivision (a), (b), *or (d)* of Section 484e,  
14 ~~subdivision (d) of Section 484e~~, subdivision (a) of Section  
15 484f, subdivision (b) *or (c)* of Section 484i, subdivision (c)  
16 of Section 502, or Section 502.7, 502.8, 529, 529a, or 530.5,  
17 537e, 593d, 593e, 646.9, *or 653m*, or was used as a repository  
18 for the storage of software or data obtained in violation of  
19 those provisions. Forfeiture shall not be available for any  
20 property used solely in the commission of an infraction.  
21 If the defendant is a minor, it also includes property of the  
22 parent or guardian of the defendant.

23 (2) "Sentencing court" means the court sentencing a  
24 person found guilty of violating *or conspiring to commit*  
25 *a violation of* Section 422, 470, 470a, 472, 475, 476, 480,  
26 483.5, 484g, or subdivision (a), (b), *or (d)* of Section 484e,  
27 subdivision (d) of Section 484e, subdivision (a) of Section  
28 484f, subdivision (b) *or (c)* of Section 484i, subdivision (c)  
29 of Section 502, or Section 502.7, 502.8, 529, 529a, ~~or~~ 530.5,  
30 537e, 593d, 593e, 646.9, *or 653m*, or, in the case of a minor,  
31 found to be a person described in Section 602 of the

1 Welfare and Institutions Code because of a violation of  
2 those provisions, the juvenile court.

3 (3) “Interest” means any property interest in the  
4 property subject to forfeiture.

5 (4) “Security interest” means an interest that is a lien,  
6 mortgage, security interest, or interest under a  
7 conditional sales contract.

8 (5) “Value” has the following meanings:

9 (A) When counterfeit items of computer software are  
10 manufactured or possessed for sale, the “value” of those  
11 items shall be equivalent to the retail price or fair market  
12 price of the true items that are counterfeited.

13 (B) When counterfeited but unassembled  
14 components of computer software packages are  
15 recovered, including, but not limited to, counterfeited  
16 computer diskettes, instruction manuals, or licensing  
17 envelopes, the “value” of those components of computer  
18 software packages shall be equivalent to the retail price  
19 or fair market price of the number of completed  
20 computer software packages that could have been made  
21 from those components.

22 (b) The sentencing court shall, upon petition by the  
23 prosecuting attorney, at any time following sentencing,  
24 or by agreement of all parties, at the time of sentencing,  
25 conduct a hearing to determine whether any property or  
26 property interest is subject to forfeiture under this  
27 section. At the forfeiture hearing, the prosecuting  
28 attorney shall have the burden of establishing, by a  
29 preponderance of the evidence, that the property or  
30 property interests are subject to forfeiture. The  
31 prosecuting attorney may retain seized property that  
32 may be subject to forfeiture until the sentencing hearing.

33 (c) Prior to the commencement of a forfeiture  
34 proceeding, the law enforcement agency seizing the  
35 property subject to forfeiture shall make an investigation  
36 as to any person other than the defendant who may have  
37 an interest in it. At least 30 days before the hearing to  
38 determine whether the property should be forfeited, the  
39 prosecuting agency shall send notice of the hearing to any

1 person who may have an interest in the property that  
2 arose before the seizure.

3 A person claiming an interest in the property shall file  
4 a motion for the redemption of that interest at least 10  
5 days before the hearing on forfeiture, and shall send a  
6 copy of the motion to the prosecuting agency and to the  
7 probation department.

8 If a motion to redeem an interest has been filed, the  
9 sentencing court shall hold a hearing to identify all  
10 persons who possess valid interests in the property. No  
11 person shall hold a valid interest in the property if, by a  
12 preponderance of the evidence, the prosecuting agency  
13 shows that the person knew or should have known that  
14 the property was being used in violation of, *or conspiracy*  
15 *to commit a violation of*, Section 311.1, 311.2, 311.3, 311.4,  
16 311.5, 311.10, 311.11, 470, 470a, 472, 475, 476, 480, 483.5,  
17 484g, or subdivision (a), (b), *or (d)* of Section 484e,  
18 ~~subdivision (d) of Section 484e~~, subdivision (a) of Section  
19 484f, subdivision (b) *or (c)* of Section 484i, subdivision (c)  
20 of Section 502, or Section 502.7, 502.8, 529, 529a, ~~or~~ 530.5,  
21 537e, 593d, 593e, *or 646.9*, and that the person did not take  
22 reasonable steps to prevent that use, or if the interest is  
23 a security interest, the person knew or should have  
24 known at the time that the security interest was created  
25 that the property would be used for a violation.

26 (d) If the sentencing court finds that a person holds a  
27 valid interest in the property, the following provisions  
28 shall apply:

29 (1) The court shall determine the value of the  
30 property.

31 (2) The court shall determine the value of each valid  
32 interest in the property.

33 (3) If the value of the property is greater than the  
34 value of the interest, the holder of the interest shall be  
35 entitled to ownership of the property upon paying the  
36 court the difference between the value of the property  
37 and the value of the valid interest.

38 If the holder of the interest declines to pay the amount  
39 determined under paragraph (2), the court may order  
40 the property sold and designate the prosecutor or any

1 other agency to sell the property. The designated agency  
2 shall be entitled to seize the property and the holder of  
3 the interest shall forward any documentation underlying  
4 the interest, including any ownership certificates for that  
5 property, to the designated agency. The designated  
6 agency shall sell the property and pay the owner of the  
7 interest the proceeds, up to the value of that interest.

8 (4) If the value of the property is less than the value of  
9 the interest, the designated agency shall sell the property  
10 and pay the owner of the interest the proceeds, up to the  
11 value of that interest.

12 (e) If the defendant was a minor at the time of the  
13 offense, this subdivision shall apply to property subject to  
14 forfeiture that is the property of the parent or guardian  
15 of the minor.

16 (1) The prosecuting agency shall notify the parent or  
17 guardian of the forfeiture hearing at least 30 days before  
18 the date set for the hearing.

19 (2) The computer or telecommunications device shall  
20 not be subject to forfeiture if the parent or guardian files  
21 a signed statement with the court at least 10 days before  
22 the date set for the hearing that the minor shall not have  
23 access to any computer or telecommunications device  
24 owned by the parent or guardian for two years after the  
25 date on which the minor is sentenced.

26 (3) If the minor is convicted of a violation of Section  
27 470, 470a, 472, 476, 480, or subdivision (b) of Section 484e,  
28 subdivision (d) of Section 484e, subdivision (a) of Section  
29 484f, subdivision (b) of Section 484i, subdivision (c) of  
30 Section 502, or Section 502.7, 502.8, 529, 529a, or 530.5,  
31 within two years after the date on which the minor is  
32 sentenced, and the violation involves a computer or  
33 telecommunications device owned by the parent or  
34 guardian, the original property subject to forfeiture, and  
35 the property involved in the new offense, shall be subject  
36 to forfeiture notwithstanding paragraph (2).

37 (4) Notwithstanding paragraph (1), (2), or (3), or any  
38 other provision of this chapter, if a minor's parent or  
39 guardian makes full restitution to the victim of a crime  
40 enumerated in this chapter in an amount or manner

determined by the court, the forfeiture provisions of this chapter do not apply to the property of that parent or guardian if the property was located in the family's primary residence during the commission of the crime.

(f) Notwithstanding any other provision of this chapter, the court may exercise its discretion to deny forfeiture where the court finds that the convicted defendant, or minor adjudicated to come within the jurisdiction of the juvenile court, is not likely to use the property otherwise subject to forfeiture for future illegal acts.

(g) If the defendant is found to have the only valid interest in the property subject to forfeiture, it shall be distributed as follows:

(1) First, to the victim, if the victim elects to take the property as full or partial restitution for injury, victim expenditures, or compensatory damages, as defined in paragraph (1) of subdivision (e) of Section 502. If the victim elects to receive the property under this paragraph, the value of the property shall be determined by the court and that amount shall be credited against the restitution owed by the defendant. The victim shall not be penalized for electing not to accept the forfeited property in lieu of full or partial restitution.

(2) Second, at the discretion of the court, to one or more of the following agencies or entities:

(A) The prosecuting agency.

(B) The public entity of which the prosecuting agency is a part.

(C) The public entity whose officers or employees conducted the investigation resulting in forfeiture.

(D) Other state and local public entities, including school districts.

(E) Nonprofit charitable organizations.

(h) If the property is to be sold, the court may designate the prosecuting agency or any other agency to sell the property at auction. The proceeds of the sale shall be distributed by the court as follows:

(1) To the bona fide or innocent purchaser or encumbrancer, conditional sales vendor, or mortgagee of

1 the property up to the amount of his or her interest in the  
2 property, if the court orders a distribution to that person.

3 (2) The balance, if any, to be retained by the court,  
4 subject to the provisions for distribution under  
5 subdivision (g).

6 *SEC. 2.* Section 1417.6 of the Penal Code is amended  
7 to read:

8 1417.6. (a) The provisions of Section 1417.5 shall not  
9 apply to any dangerous or deadly weapons, narcotic or  
10 poisonous drugs, explosives, or any property of any kind  
11 or character whatsoever the possession of which is  
12 prohibited by law or that was used by a defendant in the  
13 commission of the crime of which the defendant was  
14 convicted, or with which the defendant was armed or that  
15 the defendant had upon his or her person at the time of  
16 the defendant's arrest.

17 Any of this property introduced or filed as an exhibit  
18 shall be, by order of the trial court, destroyed or otherwise  
19 disposed of under the conditions provided in the order no  
20 sooner than 60 days following the final determination of  
21 the criminal action or proceeding.

22 (b) (1) Every person who knowingly has in his or her  
23 possession any tool or device that is seized and of a type  
24 used in the commission of a violation of Section 10801,  
25 10802, or 10803 of the Vehicle Code, shall be subject to  
26 having the tool or device intended for the above purpose  
27 deemed a nuisance as provided in paragraph (2).

28 (2) An evidentiary hearing shall be held only upon  
29 conviction of the defendant for a violation of Section  
30 10801, 10802, or 10803 of the Vehicle Code and after 15  
31 days' notice is given to the defendant of the state's intent  
32 to declare as a nuisance any property that is described in  
33 paragraph (1). All relevant evidence shall be admissible  
34 at the hearing and the state shall prove by a  
35 preponderance of the evidence that the property seized  
36 is of a type used in facilitating the commission of the crime  
37 of which the defendant was convicted.

38 (3) If a person purports to be the lawful owner of any  
39 tool or device the state seeks to be declared a nuisance,  
40 the person shall show proof by a preponderance of the

1 evidence at the hearing pursuant to paragraph (2), that  
2 he or she owns the tool or device, and the illegal use of the  
3 tool or device was without his or her knowledge or  
4 consent.

5 (4) Following a determination that the property shall  
6 be declared a nuisance, the property shall be disposed of  
7 as provided in paragraph (2) or (3) of subdivision (b) of  
8 Section 1417.5.

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